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U.S. General Land Office

Rules of practice in cases before the U.S. district...

Washington

1918

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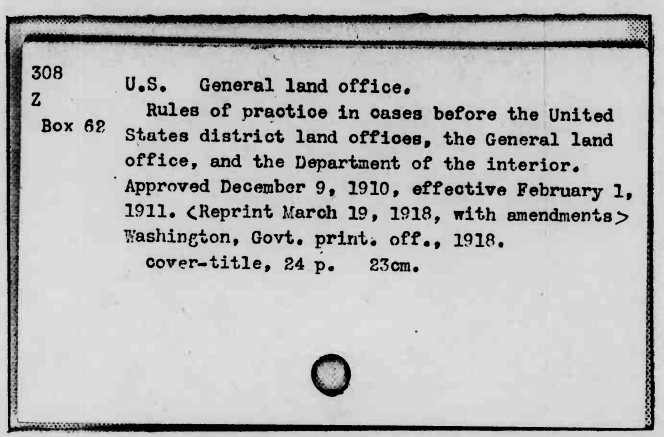

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U.S. General land office.
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RULES OF PRACTICE

IN CASES BEFORE

THE UNITED STATES DISTRICT LAND OFFICES,
THE GENERAL LAND OFFICE, AND THE
DEPARTMENT OF THE INTERIOR

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Box 62

APPROVED DECEMBER 9, 1910
EFFECTIVE FEBRUARY 1, 1911

[REPRINT MARCH 19, 1918, WITH AMENDMENTS]

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

RULES OF PRACTICE.

I.

PROCEEDINGS BEFORE REGISTERS AND RECEIVERS.

INITIATION OF CONTESTS.

RULE 1. Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Land Department.

Any protest or application to contest filed by any other person shall be forthwith referred to the Chief of Field Division, who will promptly investigate the same and recommend appropriate action.

APPLICATION TO CONTEST.

RULE 2. Any person desiring to institute contest must file, in duplicate, with the register and receiver, application in that behalf, together with statement under oath containing:

(*a*) Name and residence of each party adversely interested, including the age of each heir of any deceased entryman.

(*b*) Description and character of the land involved.

(*c*) Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

(*d*) Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

(*e*) Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

(*f*) That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

(*g*) Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

(*h*) Address to which papers shall be sent for service on such applicant.

RULE 3.[1] The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

RULE 4. The register and receiver may allow any application to contest without reference thereof to the commissioner; but they must immediately forward copy thereof to the Commissioner of the General Land Office, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

CONTEST NOTICE.

RULE 5. The register and receiver shall act promptly upon all applications to contest, and upon the allowance of any such application shall issue notice, directed to the persons adversely interested, containing:

(*a*) The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

(*b*) Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

(For contents of notice when publication is ordered, see Rule 9.)

SERVICE OF NOTICE.

RULE 6. Notice of contest may be served on the adverse party personally or by publication.

RULE 7. Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is made by publication, copy of the affidavit of contest must be served with such notice.

RULE 8.[2] Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of publication is made not later than 20 days after the fourth

[1] Amended Sept. 23, 1915. [2] Amended Nov. 15, 1912.

publication, as specified in Rule 10, the contest shall abate: *Provided*, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

SERVING NOTICE BY PUBLICATION.

RULE 9. Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within 30 days after the allowance of application to contest and within 10 days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within 15 days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

The published notice of contest must give the names of the parties thereto, description of the land involved, identification by appropriate reference of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that upon failure to answer within 20 days after the completion of publication of such notice the allegations of said affidavit of contest will be taken as confessed.

The affidavit of contest need not be published.

There shall be published with the notice a statement of the dates of publication.

RULE 10.[1] Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

Copy of the notice as published, together with copy of the affidavit of contest, shall be sent by the contestant within 10 days after the first publication of such notice by registered mail directed to the party for service upon whom such publication is being made at the last address of such party as shown by the records of the land office and also at the address named in the affidavit for publication, and also at the post office nearest the land.

Copy of the notice as published shall be posted in the office of the register and also in a conspicuous place upon the land involved,

[1] Amended Mar. 7, 1911.

such posting to be made within 10 days after the first publication of notice as hereinabove provided.

RULE 11. Proof of publication of notice shall be by copy of the notice as published attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the same, showing the publication thereof in accordance with these rules.

Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the register as to posting in the local land office.

DEFECTIVE SERVICE OF NOTICE.

RULE 12. No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but in such case the time to answer may be extended in the discretion of the register and receiver.

ANSWER BY CONTESTEE.

RULE 13. Within thirty days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within twenty days after the fourth publication, as prescribed by these rules, the party served must file with the register and receiver answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application to contest, or personally in the manner provided for the personal service of notice of contest.

Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

FAILURE TO ANSWER.

RULE 14.[1] Upon the failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the register and receiver will forthwith forward the case, with recommendation thereon, to the General Land Office, and notify the parties by registered mail of the action taken.

DATE AND NOTICE OF TRIAL.

RULE 15. Upon the filing of answer and proof of service thereof the register and receiver will forthwith fix time and place for taking testimony, and notify all parties thereof by registered-letter mail not less than 20 days in advance of the date fixed.

[1] Amended July 2, 1915.

PLACE OF SERVICE OF PAPERS.

RULE 16. Proof of delivery of papers required to be served upon the contestant at the place designated under clause "*h*" of Rule 2 in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and where notice of contest has been given by registered mail, and the registry-return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received shall, in the absence of other direction by such adverse party, be sufficient.

Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

CONTINUANCE.

RULE 17. Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that—

(*a*) The matter to which such witness would testify, if present, is material.

(*b*) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(*c*) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(*d*) That the continuance is not sought for mere purposes of delay.

RULE 18. One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

RULE 19. No continuance shall be granted if the opposite party shall admit that the witness on account of whose absence continuance is desired would, if present, testify as stated in the application for continuance.

Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

DEPOSITIONS AND INTERROGATORIES.

RULE 20. Testimony may be taken by deposition when it appears by affidavit that—

(*a*) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(*b*) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(*c*) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness can not be obtained.

RULE 21. The party desiring to take deposition must serve upon the adverse party and file with the register and receiver affidavit setting forth the name and address of the witness and one or more of the above-named grounds for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

RULE 22. The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding rule, serve and file cross-interrogatories.

RULE 23. After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, commission to take the deposition shall be issued by the register and receiver directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

Ten days' notice of the time and place of taking such deposition shall be given, by the party in whose behalf such deposition is to be taken, to the adverse party.

RULE 24. The officer before whom such deposition is taken shall cause each interrogatory to be written out, and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

RULE 25. The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be inclosed in a sealed package, indorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the register and receiver, who will indorse thereon the date of reception thereof, and the time of opening said deposition.

RULE 26. If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

RULE 27. Deposition may, by stipulation filed with the register and receiver, be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

RULE 28. Testimony may, by order of the register and receiver and after such notice as they may direct, be taken by deposition before a United States commissioner, or other officer authorized to administer oaths near the land in controversy, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the register and receiver in the like manner as is provided with reference to depositions.

RULE 29. No charge will be made by the register and receiver for examining testimony taken by deposition.

RULE 30. Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by registers and receivers.

RULE 31. When the officer designated to take deposition can not act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

RULE 32. No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

TRIALS.

RULE 33. The register and receiver and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

RULE 34. The register and receiver will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officers should, whenever necessary, personally interrogate and direct the examination of a witness.

RULE 35. In preemption cases the register and receiver will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of their office.

RULE 36. In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

RULE 37. Due opportunity will be allowed opposing claimants to cross-examine witnesses.

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RULE 38. Objections to evidence will be duly noted, but not ruled upon, by the register and receiver, and such objections will be considered by the commissioner. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

RULE 39. At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: *Provided, however*, That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken, showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

RULE 40. If a defendant demurs to the sufficiency of the evidence, the register and receiver will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

When testimony is taken before an officer other than the register and receiver, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the register and receiver will rule upon such demurrer when the record is submitted for their consideration.

If said demurrer is sustained, the register and receiver will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

Upon the completion of the evidence in a contest proceeding, the register and receiver will render joint report and opinion thereon, making full and specific reference to the posting and annotations upon their records.

RULE 41. The register and receiver will, in writing, notify the parties to any proceeding of the conclusion therein, and that 15 days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, 30 days will be allowed from the receipt of such notice within which to appeal to the commissioner.

NEW TRIAL.

RULE 42. The decision of the register and receiver will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in

courts of justice: *Provided, however*, That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

No appeal will be allowed from an order granting new trial, but the register and receiver will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony theretofore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

RULE 43. Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the register and receiver not more than 15 days after notice of decision; the adverse party shall, within 10 days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

RULE 44. Motions for new trial will not be considered or decided in the first instance by the commissioner or the Secretary of the Interior, or otherwise than on review of the decision thereof by the register and receiver.

RULE 45. If motion for new trial is not made, or if made and not allowed, the register and receiver will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the commissioner, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

The local officers will not, after forwarding of decision, as above provided, take further action in the case unless so instructed by the commissioner.

FINAL PROOF PENDING CONTEST.

RULE 46.[1] The pendency of a contest will excuse the submission of final proof on the entry involved until a reasonable time after the disposition of the proceedings, but final or commutation proof may be submitted at any stage thereof. The payment of the final commissions or purchase money, as the case may be, should be deferred until the case is closed, when, if the contest is dismissed and the proof is found satisfactory, claimant will be allowed 30 days from notice within which to pay all sums due and furnish a nonalienation affidavit, upon receipt of which the proper form of final certificate will issue.

In such cases the fee for reducing the proof testimony to writing must be paid at the time the proof is submitted.

The final proof should be retained in the local office until the record in the contest case is forwarded to the General Land Office, but will not be considered in determining the merits of the contest, though it may be used for the purpose of cross-examination during the trial.

[1] Amended May 16, 1916.

In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

APPEALS TO COMMISSIONER.

RULE 47. No appeal from the action or decision of the register and receiver will be considered unless notice thereof is served and filed with the local officers in the manner and within the time specified in these rules.

RULE 48. Notice of appeal from the decision of the register and receiver shall be served and filed with such register and receiver within 30 days after receipt of notice of decision: *Provided, however*, That when motion for new trial is presented and denied, notice of such appeal shall be served within 15 days after receipt of notice of the denial of said motion.

RULE 49. No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the register and receiver.

RULE 50. Such notice of appeal must be in writing, and set forth in clear, concise language the grounds of the appeal; if such appeal be taken upon the ground of insufficiency of the evidence to justify the decision, the particulars of such insufficiency must be specifically set forth in the notice, and, if error of law is urged as a ground for such appeal, the alleged error must be likewise specified.

Upon failure to serve and file notice of appeal as herein provided the case will be closed.

RULE 51. When any party fails to move for a new trial or to appeal from the decision of the register and receiver within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of—

(*a*) Fraud or gross irregularity.

(*b*) Disagreement in the decision between the register and receiver.

No case will be remanded for any defect which does not materially affect the aggrieved party.

RULE 52. All documents received by the local officers must be kept on file and the date of filing noted thereon; no papers will, under any circumstances, be removed from the files or from the custody of the register and receiver, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

COSTS AND APPORTIONMENT THEREOF.

RULE 53. A contestant claiming preference right of entry under the second section of the act of May 14, 1880 (21 Stat., 140), must

pay the costs of contest. In other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses; the cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

RULE 54. Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

RULE 55. Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the preemption, homestead, or desert-land laws by virtue of settlement and improvement without reference to the act of May 14, 1880, the costs of contest will be imposed as prescribed in the second clause of Rule 53.

RULE 56. The only cost of contest chargeable by registers and receivers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

RULE 57. Registers and receivers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

RULE 58. Upon the filing of the transcript of the testimony in the local office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

RULE 59. When hearings are ordered on behalf of the Government, all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by Rule 53.

RULE 60. The costs provided for by the preceding rules will be collected by the receiver when the parties are brought before him in obedience to the order for hearing.

RULE 61. The receiver will append to the report in each case a statement of costs, the amount actually paid by each of the parties, and the disposition thereof.

PREPARATION OF NOTICES.

RULE 62. All notices and other papers not required to be served by the register and receiver must be prepared and served by the respective parties.

RULE 63. The register and receiver will require proper provision to be made for such notices not specifically provided for in these rules as may become necessary in the usual progress of the case to final decision.

APPEAL FROM DECISION REJECTING APPLICATION TO ENTER PUBLIC LANDS.

RULE 64. To facilitate appeals from the action of local officers relative to applications to file, enter, or locate upon the public lands, the register and receiver will—

(*a*) Indorse upon every rejected application the date of presentation and reasons for rejection.

(*b*) Promptly advise the party in interest of their action and of his right of appeal.

(*c*) Note upon their records a memorandum of the transaction.

RULE 65. The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the local land office. The notice of appeal, when filed, will be forwarded to the General Land Office with full report upon the case, which should recite all the facts and proceedings had, and must embrace the following particulars:

(*a*) The original application, with reasons for the rejection thereof.

(*b*) Description of the tract involved and statement of its status, as shown by the records of the local office.

(*c*) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

II.

PROCEEDINGS BEFORE SURVEYORS GENERAL.

RULE 66. The proceedings in hearings and contests before surveyors general shall, as to notices, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before registers and receivers, unless otherwise provided by law.

III.

PROCEEDINGS BEFORE THE COMMISSIONER OF THE GENERAL LAND OFFICE AND SECRETARY OF THE INTERIOR.

EXAMINATION AND ARGUMENT.

RULE 67. The commissioner will cause notice to be given to each party in interest whose address is known of any order or decision affecting the merits of the case or the regular order of proceedings therein.

RULE 68. No additional evidence will be admitted or considered by the commissioner unless offered under stipulation of the parties or in support of a mineral application or protest: *Provided, however,* that the commissioner may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the commissioner will not be considered in finally determining any controversy upon the merits.

RULE 69. After receipt of the record by the commissioner 30 days will be allowed to expire before any action is taken thereon, unless, in the judgment of the commissioner, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do: *Provided,* That where no appeal has been filed the case may be immediately considered and disposed of.

RULE. 70. If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the commissioner therefor.

RULE 71. In the discretion of the commissioner, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

REHEARINGS.

RULE 72. No motion for rehearing of any decision rendered by the Commissioner of the General Land Office will be allowed.

MOTIONS.

RULE 73. No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

In ex parte cases, where the entryman has been allowed by the commissioner to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the commissioner shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the Secretary as in other cases.

APPEAL FROM THE COMMISSIONER TO THE SECRETARY.

RULE 74. Except as herein otherwise provided, an appeal may be taken to the Secretary of the Interior from the final decision of the commissioner in any proceeding relating to the disposal of the public lands and private claims.

RULE 75. No appeal shall be had from the action of the commissioner affirming the decision of the local officers in any case where the party adversely affected shall have failed to appeal from the decision of said local officers.

RULE 76. Notice of appeal from the commissioner's decision must be served upon the adverse party and filed in the office of the register and receiver or in the General Land Office within 30 days from the date of service of notice of such decision.

RULE 77. When the commissioner considers an appeal defective he will notify the party thereof; and if the defect be not cured within 15 days from the date of receipt of such notice, the appeal may be dismissed and the case closed.

RULE 78. In proceedings before the commissioner in which he shall decide that a party has no right to appeal to the Secretary, such party may apply to the Secretary for an order directing the commissioner to certify said proceedings to the Secretary and suspend action until the Secretary shall pass upon the same; such application shall be in writing, under oath, and fully and specifically set forth the grounds upon which the same is made.

RULE 79. When the commissioner shall decide against the right of appeal he will suspend action on the case for 20 days from service of notice of such decision to enable the party against whom the decision is rendered to apply to the Secretary for an order certifying the record as hereinabove provided.

RULE 80. The appellant will be allowed 20 days after service of notice of appeal within which to serve and file brief and specification of error, as provided by Rule 50, the adverse party 20 days after service of such within which to serve and file reply thereto; appellant will be allowed 10 days after service of such reply within which to serve and file response: *Provided, however*, That if either party is not represented by counsel having offices in the city of Washington, 10 days in addition to each period above specified will be allowed within which to serve and file the respective briefs.

No arguments otherwise than above provided shall be made or filed without permission of the Secretary or commissioner granted upon notice to the adverse party.

RULE 81. Examination of cases will be facilitated by filing arguments in printed form.

ORAL ARGUMENT BEFORE THE SECRETARY.

RULE 82.[1] Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the Secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour, unless an extension of time is ordered before the argument begins.

REHEARING OF SECRETARY'S DECISION.

RULE 83.[2] Motions for rehearing before the Secretary must be filed within 30 days after receipt of notice of the decision complained of and will act as a supersedeas of the decision until otherwise directed by the Secretary. Such motions, briefs, and arguments must not be served on the opposite party and must be filed directly with the Secretary of Interior, Washington, D. C.

Any such motion must state concisely and specifically the grounds upon which the motion for rehearing is based and be accompanied by brief and argument in support thereof.

If proper grounds are not shown the rehearing will be denied and sent to the files of the General Land Office, whereupon the commissioner will proceed to execute the decision before rendered. If upon examination grounds sufficient for rehearing are shown, a rehearing will be granted and the moving party will be notified that he will be allowed 15 days from receipt of notice within which to serve a copy of his motion, together with all argument in support thereof, on the opposite party, who will be allowed 30 days thereafter in which to file and serve answer, brief, and argument. Thereafter the cause or matter will be again considered and appropriate action taken, which may consist either in adhering to the former decision or modifying or vacating the same, or the making of any further or other order deemed warranted.

As applied to the Territory of Alaska, the periods of time granted by this rule shall be doubled.

MOTIONS FOR REVIEW AND REREVIEW.

RULE 84. Motions for review and rereview are hereby abolished.

SUPERVISORY POWER OF SECRETARY.

RULE 85. Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraordinary emergency or exigency demanding the exercise of such authority.

In proceedings before the Secretary of the Interior the same rules shall govern, in so far as applicable, as are provided for proceedings before the Commissioner of the General Land Office.

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[1] Amended Nov. 6, 1911. [2] Amended Oct. 25, 1915.

RULE 86. No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law.

ATTORNEYS.

RULE 87.[1] Every attorney, before practicing before the Department of the Interior and its bureaus, must comply with the requirements of the regulations prescribed by the Secretary of the Interior pursuant to section 5 of the act of July 4, 1884 (23 Stat., 101).

RULE 88. In all cases where any party is represented by attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

Where a party is represented by more than one attorney service of notice or other papers upon one of said attorneys shall be sufficient.

RULE 89. No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and post-office address and the name and post-office address of the party whom he represents.

RULE 90. Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

RULE 91. Verbal or other inquiries by parties or counsel directed to any employee of the department, except the commissioner, assistant commissioner, or chief of division of the General Land Office, or the Secretary and Assistant Secretary, the Solicitor, or the first assistant attorney in the offices of the Secretary of the Interior, or with the consent of one or more of said officers, is expressly forbidden.

RULE 92. Abuse of the privilege of examining records of the department or violation of the foregoing rule by any attorney will be treated as sufficient cause for institution of disbarment proceedings.

SERVICE OF NOTICES.

RULE 94.[2] Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notice or other papers by mail from the General Land Office, except in case of notice to resident attorneys, in which case one day will be allowed.

In computing time for service of papers under these rules of practice the first day shall be excluded and the last day included: *Provided*, That where the last day is a Sunday, a legal holiday, or half holiday such time shall include the next full business day.

[1] Amended Apr. 9, 1915. [2] Amended Apr. 30, 1917.

RULE 95.[1] Notice of all motions and proceedings before the commissioner or Secretary, except as specified below, shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof. As to motions for rehearing, petitions for certiorari and petitions for the exercise of supervisory authority before the Secretary, service of notice shall be made only after such proceeding has been entertained and service directed, as provided by Rule 83.

RULE 96. Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules perscribed in other cases, so far as the same are applicable. In such cases the commissioner or Secretary may, pursuant to application and upon good cause being shown therefor, permit additional evidence to be presented for the purpose of curing defects in the proofs of record.

INTERVENTION.

RULE 97. No person shall be allowed to intervene in any case except upon application therefor, under oath, showing his interest therein.

HOW TRANSFEREES AND INCUMBRANCERS MAY ENTITLE THEMSELVES TO NOTICE OF CONTEST OR OTHER PROCEEDINGS.

RULE 98.[2] Transferees and incumbrancers of land the title to which is claimed or is in process of acquisition under any public-land law shall, upon filing notice of the transfer or incumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or incumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the General Land Office, where like notation thereof will be made. Thereafter such transferee or incumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

ACKNOWLEDGMENT OF THE FILING OF APPLICATIONS AND OTHER PAPERS.

RULE 99.[3] The Secretary and the Commissioner of the General Land Office will not acknowledge the receipt of papers forwarded by mail, but if a prepared receipt is forwarded to a district land office with any paper the register or receiver will sign and return the receipt to the party who forwarded the same, after inserting the date and the serial number.

[1] Amended Sept. 28, 1917. [2] Adopted Sept. 23, 1915. [3] Adopted Nov. 10, 1915.

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END OF
TITLE